SUPREME COURT, U.S.
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CAUSE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

REVEREND HOMER GREEN,
Petitioner
V.
UNITED PENTECOSTAL CHURCH INTERNATIONAL,
Respondent

On Writ of Certiorari to
The Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

[See Introductory Statement tendered for clarity immediately following these questions.]

Question No. 1.

Is the central religious organization constitutionally amenable to this secular suit, especially inasmuch as such promised procedure is a solely factfinding inquiry involving no religious considerations, and furthermore since any such affiliated local congregation with whom the accused minister could seek employment, absent such license cancellation, always retains absolute discretionary control of "who shall preach in its pulpit" despite any minister's holding of such a license, so that the Federal Constitution's First and Fourteenth Amendments are not operable?

Question No. 2.

Should secular jurisdiction in any event obtain, even if the Federal Constitution's First and Fourteenth Amendments are in some way applicable to the suit, due to the central religious organization's

egregiousness (evincing arbitrariness, fraud, and collusion) inherent in its blatant and selective denial of its own clearly guaranteed "ecclesiastical due process," as it were?

Question No. 3.

Should secular jurisdiction furthermore in any event obtain inasmuch as the central religious organization's egregiousness deprived the minister of his own rights in the form of guaranties and protections under the United States Constitution, to-wit, in its Fourteenth Amendment which assures the due process of law and the equal protection of the laws; in its Article I, Section 10, clause 1, forbidding impairment of the obligation of the contract constituted by the central organization's guaranty of such "ecclesiastical due process"; and in said First and Fourteenth Amendments' safeguarding of the minister's own free exercise of religion)?

Introductory Statement
Germane to Questions Presented

Respondent, United Pentecostal Church International ("UPCI"), a central religious organization (association of Pentecostal ministers) licenses its ministers. Petitioner, Reverend Homer Green, was such a licensed minister. Such licenses are essential to a minister's obtaining or retaining any pastoral or other clergy position with any local affiliated church congregations. Said congregations nevertheless always retain absolute prerogative as to whether to engage or retain any such licensed minister. Respondent's "Judicial Procedure for Ministers" ("JPFM") guarantees a "jury trial" before licensed-minister peers on any charges of misconduct lodged against a minister which would justify defrockment if established. Guilt of such charges "beyond a reasonable doubt" must be found by such "jurors" in order for such credentials to be cancelled. Respondent nevertheless cancelled Petitioner's license without affording him such a "jury trial," after twenty-seven years of affiliated service as a UPCI minister.

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OPINIONS, JUDGMENTS AND ORDERS BELOW

The trial court dismissed this cause solely for want of subject matter jurisdiction on the ground that the First Amendment precluded secular jurisdiction.

Said trial court's final judgment ("Order Granting Defendant's Motion to Dismiss") was rendered (for appellate purposes, by signing, TEX. R. CIV. P. r. 306a) on October 25, 1993. Statement of Facts (trial court transcript of hearing; "S.F.") 143. After Petitioner's timely appeal of that dismissal order, the Court of Appeals for the Third District of Texas rendered a judgment of affirmance on May 3, 1995. The opinion of the Third Court of Appeals is reported at 899 S.W.2d 28. Said Court of Appeals overruled the timely Amended Motion for Rehearing of the Appellant (Petitioner here) on June 21, 1995. Petitioner's timely filed Application for Writ of Error to the Supreme Court of Texas was overruled by that Court on September 14, 1995. The Supreme Court of Texas thereafter overruled Petitioner's timely filed Amended Motion for Rehearing of Application for Writ of Error on October 27, 1995.

The trial court final judgment (dismissal order), the Court of Appeals opinion, and the related appellate orders are reflected in the appendix.

BASIS FOR JURISDICTION

The final order of the Supreme Court of Texas, on October 27, 1995, which overruled Petitioner's Amended Motion for Rehearing of Application for Writ of Error, is actually the "judgment or order sought to be reviewed" under Sup. Ct. R. 14.1(e)(i), although the Third Court of Appeals of Texas is possessed of the record, inasmuch as the Texas Supreme Court denied Petitioner's Application for Writ of Error. TEX. R. APP. P. r. 133(a).

The date of the Supreme Court of Texas order overruling Petitioner's Amended Motion for Rehearing of Application for Writ of Error was October 27, 1995.

The Supreme Court of the United States has jurisdiction of this cause under 28 U.S.C. Sec. 1257, which confers such jurisdiction "where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the

United States."

CONSTITUTIONAL PROVISIONS INVOLVED

The following provisions of the United States Constitution are involved in this case:

> "No State shall . . . pass any Law impairing the Obligation of Contracts . . . ." U.S. CONST. art. I, sec. 10, cl. 1.

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST. amend. I.

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". U.S. CONST. amend. XIV.

STATEMENT OF THE CASE

Respondent, United Pentecostal Church International ("UPCI"), is actually an association of ministers, or, as Respondent has even said in at least one case, viz., United Pentecostal International v. Sanderson, 391 So.2d 1293, 1297, "the central church is actually a ministerial aliance of individuals with which local assemblies affiliate . . . ." In that same cause, 391 So.2d at 1297, the Louisiana court noted that "We observe from United's pleadings that it is a Congregational church and those local churches which affiliate with it retain their local autonomy."

We make this observation simply in order to stress at the outset that we regard it of no significance whatever whether this central religious organization is to be deemed "congregational" or hierarchical; but, inasmuch as it has said so, the former characterization should be applied. Cases which have stressed the importance of such a dichotomy need not have done so: The reason that secular jurisdiction has been held so often to collide with the First

Amendment when a plaintiff seeks to sue a religious organization lies in the nature of the matter in controversy, not in what its polity is. The alleged acts or omissions of hierarchical organizations nearly always involve matters of ecclesiastical doctrine, tenets,or polity, so that the relevant matters cannot be litigated in civil court. If such is not the case, then it should not -- and it actually does not -- affect civil jurisdiction in the least that the defendant is a church or other religious entity.

The essence of this suit is that Respondent guaranteed the ministers to whom it issued licenses, including Petitioner (who was such a licensed minister for twenty-seven years) the protection against losing such credentials in the event of misconduct charges, by the following provision from its "Judicial Procedure for Ministers":

> "Since it is the desire of our fellowship to protect the rights of the accused, it must always be assumed that the accused is innocent until proven guilty beyond a reasonable doubt. . . .
>
> "No licensed or ordained minister in the

> fellowship of the United Pentecostal Church shall be required to forfeit his credentials without recourse to a fair impartial trial as set forth in this Judicial Procedure." Tr. 75, 79; S.F. 89, 90, Plaintiff's Exhibit 2, UPCI Manual, pp. 116, 120

It is the denial of this expressly provided "ecclesiastical due process," if you will, which is the gravamen of Petitioner's case. After a "pretrial hearing" conducted on November 29 and 30, 1989, which, we contend, conclusively showed that UPCI would not make its case in front of its own minister licensees as "jurors" in the "jury trial" scheduled for January 18, 1990, Respondent for the first time on January 16, 1990 declared that, back during the November "pretrial hearing," Petitioner had, after all, fatally blundered by committing such above-referred to (but spuriously urged) impotent excuse for not going through with the guaranteed UPCI "jury trial" setting Respondent thereon cancelled. Such was not at all proven by any competent evidence in the dismissal hearing which led to the trial court's order based solely on the First Amendment.

Throughout this case, the only arguable basis for Respondent's position on immunity, and the only ground available for the holdings of all three Texas courts below, has been that civil jurisdiction under our facts would trespass on the First Amendment to the United States Constitution. As we will argue below, that is the chief issue, and a legal issue, but one which the law does not really support in a context such as ours. There was no fact issue effectively raised, although the Court of Appeals opinion contains at least casual references, amid convoluted expressions, which need to be briefly treated below (in connection with our "Reasons for Granting the Writ of Certiorari"). In short, those references are to (wholly unsupported) matters, not raised effectively in the record, which would have gone to an issue of whether Respondent had a right to take Petitioner's credentials because (allegedly) he practiced "intimidation" of witnesses and/or "interference" with the "ecclesiastical" (in the sense of intraorganizational, not substantively religious) proceedings which were ultimately withheld from Petitioner at the "jury trial" stage.

The central matter in this case is the issue of whether the

First Amendment to the United States Constitution, and its application to the states through the Fourteenth Amendment thereto governs this case so as to justify the trial court's dismissal, and the appellate courts' affirmance thereof, for want of subject-matter jurisdiction. See Appendix, trial court's "Order Granting Defendant's Motion to Dismiss" [Transcript of trial court documents, orders and proceedings in the appellate record ("Tr.") 143]. The issue arose, and the dismissal hearing of September 30, 1993 thereon was held, based upon "United Pentecostal Church International's Motion to Dismiss for Want of Jurisdiction" theretofore filed [Tr. 20-116]. Respondent UPCI's said contentions in this regard were embraced by the trial court as follows and as the sole basis for the dismissal:

> "The Court determines and concludes that the First Amendment to the United States Constitution precludes subject-matter jurisdiction over this suit . . . ."

Of course, this position on the "central matter" of the case was at all times opposed in all

requisite appellate efforts by Petitioner. And it is the "only matter" of contention validly assertible by Respondent herein. However, other constitutional contentions, by Petitioner, were timely raised in this case. They were first urged in the appellate courts, since they were not material while the cause subsisted in the trial court. Only after Petitioner had to mount an appellate effort, to hopefully reverse the trial court's order dismissing the case under the First Amendment religious clauses, was it necessary to (optionally) urge constitutional considerations in addition to the "central" opposition, by Petitioner, to dismissal based on First Amendment immunity from suit.

Such additional considerations all operate independently, and, Petitioner contends, do so adequately to have mandated reversal, in addition to (as well as in combination with) Petitioner's continually and primarily asserted claims (which were advanced in points of error in all filed briefs, and which were orally argued to the Court of Appeals) that

(1) there is absolutely no basis for invoking the United States Constitution's First and Fourteenth

Amendments in support of the (utterly untenable) dismissal for want of subject-matter jurisdiction, since

(a) no religious considerations were involved in any of the operative facts or the litigation thereof; and

(b) the outcome of the crucial but summarily denied "ecclesiastical due process" which Petitioner says Respondent owed to but blatantly denied to him (to-wit, a so-called "jury trial" before a jury of his UPCI-licensed-minister peers) would not have conferred any protection or benefit on him which would have to any degree operated to restrict the fully exercisable prerogative of UPCI and any of its affiliated local church congregations to exclude Petitioner from any ecclesiastical office, position or employment, including of course any "preaching in their pulpits." This last-quoted expression is a shibboleth which

> Respondent has tirelessly chanted in order to becloud the fact that this suit (involving quite substantial damages) is a simple, and maintainable suit for tortious contractual breach; since Petitioner's UPCI minister's license, which Respondent summarily cancelled without affording the "ecclesiastical due process," as it were, which it had guaranteed to all its ministers, was a vital prerequisite for any minister to seek to obtain or retain any ecclesiastical post whatever, which UPCI or any local affiliated congregation could nonetheless deny to or take away from him;

and (2) Respondent UPCI's summary cancellation of Petitioner's minister's license, in the teeth of its "Judicial Procedure for Ministers" ("JPFM") which guaranteed him and any other UPCI-licensed minister his or her entitlement to the "ecclesiastical due process" of such a "jury trial" before minister-peer "jurors" whose findings of guilt on any crucial

misconduct charges worthy of defrockment had to be "beyond a reasonable doubt," was, by its very nature, such egregious conduct as will justify secular court intervention when litigation thereon is brought, as the courts are beginning to hold.

Said "additional considerations," in terms of federal questions, on which Petitioner should never be required to rely under our facts (owing to the above "central" contentions), are nonetheless themselves independently adequate to protect Petitioner's right to litigate this case. They were clearly (with one arguable exception) timely asserted in points of error and textual argument in all vital briefs filed by Petitioner (which of course occurred after he was put to the need to appeal). These additional (though "secondary") grounds for the viability of this action based on tortious contractual breach were:

(3) The denial of secular jurisdiction, in the teeth of Respondent UPCI's guaranty in its JPFM of what amounted to the "ecclesiastical due process" which we say would in any event obtain, even in the absence of such guaranty, amounts to unconstitutional abridgment of the

obligations of a contract, in violation of U.S. CONST. art. 1, sec. 10, cl. 1;

(4) Petitioner is assured of the protection of the due process of law and the equal protection of the laws, under U.S. CONST. amend. XIV, which is denied to him if reasonably adequate "ecclesiastical due process," even in the absence of such an explicit guaranty thereof as should control this case, and in the minimal form of notice and an opportunity to be heard concerning any grievance, is withheld; this right and privilege obtaining in Petitioner's favor at least to the extent of any custom or usage to that effect, before any allegations of misconduct sufficient to justify religious expulsion is applied, as has already been judicially recognized; and

(5) Petitioner is furthermore denied his own free exercise of religion, guaranteed to him under U.S. CONST. amends. I and XIV, if the provisions of Respondent's JPFM and the "ecclesiastical due process," as it were, which it moreover guarantees, is withheld from him; since it is hardly arguable that Petitioner did not enjoy a valuable religious right and/or privilege through the exercise of his UPCI minister's license, by obtaining the

employment (including pastoral positions) for which such license, in addition to local UPCI-affiliated church congregations' independently required prerogative of engaging and retaining him alone (jointly) made possible.

This last argument was expressly advanced by Petitioner for the first time after the Court of Appeals' affirmance and in Petitioner's amended motion for rehearing while the case was still pending there. However, we say that the contentions advanced by Petitioner at all stages of this litigation inherently carried this matter forward in the same manner as was true with respect to Petitioner's other (and expressly) asserted grounds for secular jurisdiction of this suit. As to this last-listed ground (of Petitioner's free-exercise abridgment), such contention was presented in Petitioner's "Rehearing Point of Error No. 29." Petitioner's motion for the Court of Appeals to consider that point was overruled.

REASONS FOR GRANTING WRIT OF CERTIORARI

The matter at issue herein is significant enough, as it would be even in the absence of any conflict between this Texas decision and those in certain other states, to justify the granting of the writ of certiorari. There are many secularly litigable contexts which occur in daily life notwithstanding the presence of a religious backdrop. To mention just two (the first rather facetiously; the other two most seriously), we could allude respectively (1) (although not too "respectfully") to the right any plaintiff has to sue for an unpaid bill owed by a church, e.g., to repair its plumbing; (2) to the suit against a religious entity based upon alleged deviant conduct of an official while operating in such a capacity; and (3) to fraudulent acts of a minister who bilks his parishioners or (especially his television) constituents out of funds obtained on false pretenses. The latter alleged litigious ingredient is well illustrated by the recent case reaching the Supreme Court of Texas at an interlocutory stage, viz., Tilton v. McClellan, ____ Tex. Sup. Ct. J. _____ (August 1, 1995) [presumably still on rehearing and therefore not yet published].

The rationale for this

"legal fact of life," i.e., the vulnerability to suit notwithstanding the religious nature of the defendant or the factual background, is partly that of the absence of any truly ecclesiastical characteristic inherent in the controversy. In addition, there is sufficient impetus for finding jurisdiction on the basis of the policy of making all persons and organizations responsible for their wrongful actions if there is really no constitutional collision with the First Amendment.

There is no constitutional impediment here. Respectfully, this honorable Court should rectify what has happened; it should untangle any convoluted judicial thinking which gravitates toward incorrect resolution in, or, worse yet, outright denial of access to, the civil courts; and it should remove the excuse for cavalier citation and reliance, both by counsel and by any forum, on the (imaginary) foreclosure of a lawsuit, when no ecclesiastical controversy lurks therein, owing merely to the so-called "separation of church and state," whatever the degree of plethora of immunity grounds on that concept may have correctly been asserted in other contexts.

This case has as its central

thread a controversy on which other courts indeed disagree with Texas. Such other courts have rendered decisions, in cases of minister or parishioner expulsion, which promote the same honesty, fair dealing, protection of decent interests, and compensation for wrongful infliction of harm which the law strives for in the absence of some inescapably applicable constitutional privilege or immunity.

There indeed is a divergence of view between the Texas holding in this case and the judicial determinations made in others, which ought to draw this Court toward a review of such an important matter, however mundane the facts may be regarded. The only reason there are not more written guaranties of "ecclesiastical due process" similar to Respondent's "Judicial Procedure for Ministers" is most likely due to the attitude that it is futile to prescribe such.

It is not a useless exercise at all, at least when the matter being so admirably self-regulated (until it is egregiously ignored) does not have a truly religious nature. The "jury trial" to which Petitioner was entitled was a purely factfinding inquiry. We need not argue the salutary purpose of such a provision as that contained in the

UPCI "Judicial Procedure for Ministers" even if the JPFM thereby operated on religious matters. It did not, and it does not, by the nature of the matter involved (viz., alleged minister misconduct reviewed solely as to the facts).

However, if it be argued that religious matters are somehow possibly to be drawn into controversies such as this -- the argument is untenable -- then UPCI effectively made the "ecclesiastical decision" to so regulate itself and its ministers, viz., by means of such "jury trials" before "juror" peers when its licensed ministers are accused of misconduct. Moreover, that decision to provide such JPFM assurances is in any event itself an overridingly controlling edict (even if "religious" in character), which compels the guaranteed "jury trial" so egregiously denied to Pettioner. That past decision is in any event operable to the end that there is civil jurisdiction in such cases as this, when the "rubber meets the road" and a minister becomes in fact accused.

True, there are not many decisions by other courts in this area; but that is for the reason, almost always present, that religious considerations are

involved in the litigation. There would be more decisions to cite if there were more contexts like ours. But when there have been "religiously cleansed" fact situations, if you will, then there has been a judicial recognition that the particular suits can go forward on the facts and on the law otherwise applicable. Such a conflict between such cases and ours constitutes more than enough basis for the discretionary review of this case under Sup. Ct. R. 10(b).

Petitioner's is, like such occasionally arising contexts in this country, a case eligible for litigation of the law and facts involved, being free of religious considerations. Petitioner furthermore seeks damages for an enormous personal and financial loss occasioned by egregious conduct on Respondent's part. The courts have also recognized that kind of context as conferring civil jurisdiction on the particular lawsuits involved, even though and even if truly ecclesiastical considerations are present in the litigation or could become relevant.

Doubtlessly, Respondent knows that it erected a red herring, pure and simple, when it tried to urge a contention (1) which the trial court did not even seriously

note, as reflected in its dismissal order, and (2) which the Texas Third Court of Appeals gave no serious attention, viz., the "safety-net" argument, made in Respondent's surely deliberate rationalization at the time that it cited (actually, but one) "reason" of the two spurious "grounds" for the cancellation which it thereupon effected of Petitioner's license, in its January 16, 1990 General Board Meeting minutes. We refer to the arguments (only the first of which the Board minutes mentioned as grounds for denial of such "ecclesiastical due process"), concerning alleged "intimidation" of witnesses and "interference" with the UPCI judicial procedure. Both such contentions were conclusively negated in the dismissal hearing.

It was demonstrated by Petitioner, both in argument and in briefs, with no effective rebuttal coming forth in opposition thereto, that there was utterly no evidence which would make those contentions anything but empty excuses. With all respect, Petitioner nevertheless regards as mere excessive justification and moreover casual reference the characterization of these matters, in the Court of Appeals opinion, as legitimate matters for subjective ecclesiastical discretion. Not so,

certainly when there was no evidence thereof on which such "discretion" could arguably operate; otherwise, absolutely no praiseworthy self-regulatory enactments would be enforceable.

There will be more desirable provisions adopted akin to Respondent's "Judicial Procedure for Ministers" -- parishioners will see to it -- if this Court declares them enforceable. by taking and reversing this case.

The most important points in this case are:

(1) There was no truly "ecclesiastical" consideration involved, either at the UPCI disciplinary level, which should have included the mere guaranteed factfinding inquiry, i.e., "did he do it?; not "is it morally or spiritually wrong?"; and there was a total absence thereof among the questions drawn into this suit for tortious contractual breach.

(2) Respondent's conduct

was utterly egregious. It sufficiently constituted, by definition, arbitrariness, collusion and fraud, so as to invoke civil jurisdiction even if a matter of religious doctrine, tenet, or polity were involved. Gonzales v. Archbishop, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929).

(3) The frustration of reliance on the JPFM provisions for an intraorganizational "jury trial" on misconduct charges constitutes a forbidden impairment of the obligation of Respondent's contract to provide such, in violation of U.S. CONST. art. 1, sec. 10, cl. 1.

(4) The law recognizes the entitlement of ministers and parishioners to customary or expressly prescribed "ecclesiastical due process" at least to the extent of guaranteeing fair notice and an opportunity to be heard regarding any grievance crucial to survival of valuable rights and

privileges otherwise exercisable in the absence of such jeapordy.

(5) To deny relief here to Petitioner deprives him of the equal protection of the laws which operate in other contexts to similarly accord such due process, as, e.g., judicial review even in administrative-law matters where violation of constitutional rights have been urged. City of Houston v. Blackbird, 394 S.W.2d 159 (Tex. 1965).

(6) Petitioner's (own) "free-exercise" rights in the religious area are curtailed by the decision rendered below. Without this Court's rightful intervention, he has no remedy although valuable rights and privileges as a Pentecostal minister in UPCI-affiliated circles have been `taken away from him by allegedly actionable conduct interfering with matters which do not, and the ligitation of which would not, touch on religious considerations or, if they

did, should be examined in civil court owing to the alleged egregiousness of the actor.]

Authorities in support of Petitioner include Bear v. Reformed Mennonite Church, 462 Pa. 330, 341 A.2d 105 (1975) (First Amendment prohibition on deciding issues of religious doctrine or polity does not bar religious parties or institutions from litigating secular legal questions); Brundage v. Deardorf, 55 Fed. 839 (N.D. Ohio 1893) (Hierarchical decisions are not conclusive on courts when in open and avowed defiance and express violation of body's constitution); accord, Elmora Hebrew Center, Inc. v. Fishman, 593 A.2d 725 (N.J. 1991); Evans v. Criss, 240 N.Y.S.2d 517 (Sup. 1963) (Pastoral dismissal predicated on alleged misconduct requires procedure conducted in strict accordance with stated governing principles or, if none exist, with accepted and honored custom, policies and usage, most important of which is notice and an opportunity to be heard); Gonzalez v. Archbishop, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929) ("Egregiousness" exception exists even with regard to contended hierarchical immunity under the First amendment); Hayes v. Board of Trustees of Holy Trinity Baptist

Church of Amityville, 225 N.Y.S.2d 316 (Sup. 1962) (Courts will enforce church law or usage requiring notice and opportu to be heard prior to congregational church member's expulsion); Hutchison v. Thomas, 789 F.2d 392 (6th Cir. 1986) ("Egregiousness" confers jurisdiction); Kennedy v. Gray, 807 P.2d 670 (Kan. 1991) (If a congregational church provides procedure for expulsion of a member, a good-faith effort to follow that procedure must be made). Reardon v. Lemoyne, 454 A.2d 428 (N.H. 1982) (There was jurisdiction over the bishop and others in a suit involving nuns' employment contracts); Van Schaick v. Church of Scientology of California, Inc., 535 F.Supp. 1125 (D.C.Mass. 1982) (Even if defendant is a "religion," not all of member's counts (specifically, certain ones alleging fraud and intentional infliction of emotional distress) which were alleged against defendant are barred by the First Amendment. The Constitution does not insulate religious organizations or their members from all liability, such as common-law actions for tortious activity. Freedom to believe is absolute, but freedom to act is not.).

CONCLUSION

For the reasons stated, this Court should take this case for review. There was no religious matter involved. The conduct of Respondent was egregious. Petitioner's rights under Respondent's contract were impaired. Petitioner furthermore enjoyed the right and privilege of having a contested hearing. Finally, the rights of Petitioner which were frustrated included those of freely exercising his religion.

WHEREFORE, Petitioner prays for full review of this case and its ultimate reversal and remand for trial, with appropriate ancillary orders.

CAUSE NO. 92-00572

REVEREND HOMER GREEN	*	IN THE DISTRICT COURT
	*	
V.	*	TRAVIS COUNTY, TEXAS
	*	
UNITED PENTECOSTAL CHURCH INTERNATIONAL	*	200TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

On the 30th day of September, 1993, the Court heard the Defendant's Motion to Dismiss for Want of Jurisdiction of the subject matter, filed in this cause by Defendant, United Pentecostal Church International. The Defendant/Movant appeared by and through its counsel, Kenton P. Campbell, and Plaintiff/Respondent appeared by and through his counsel, Will Hampton and Bob Andrews. The Court examined the pleadings of the parties, the motion to dismiss, the Plaintiff's response thereto, and the documentary evidence introduced, and heard the Plaintiff's motion to exclude affidavit testimony, the oral testimony presented by the Plaintiff, and the arguments of counsel. The Court determines and concludes that the First Amendment to the United States Constitution precludes subject-matter

jurisdiction over this suit, so that the Court is of the opinion that Defendant is entitled to judgment as follows:

It is therefore ORDERED, ADJUDGED AND DECREED that Plaintiff, Reverend Homer Green, take nothing against Defendant, United Pentecostal Church International, and that Plaintiff's cause be dismissed for lack of subject-matter jurisdiction, Defendant go hence without day, and that all costs of Court be borne by the party incurring them.

All relief requested and not expressly granted herein is denied.

SIGNED this 25th day of October, 1993.

/s/ PAUL R. DAVIS
JUDGE PRESIDING

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IN THE COURT OF APPEALS, THIRD DISTRICT
OF TEXAS, AT AUSTIN

JUDGMENT RENDERED MAY 3,1995

NO. 03-94-00088-CV

REVEREND HOMER GREEN V.
UNITED PENTECOSTAL CHURCH INTERNATIONAL
APPEAL FROM 200TH DISTRICT COURT OF
TRAVIS COUNTY

BEFORE CHIEF JUSTICE CARROLL, JUSTICES
ABOUSSIE AND JONES
AFFIRMED -- OPINION BY CHIEF JUSTICE
CARROLL

THIS CAUSE came on to be heard on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the trial court's order: IT IS THEREFORE considered, adjudged and ordered that the order of the trial court is in all things affirmed. It is FURTHER ordered that the appellant, Reverend Homer Green, pay all costs relating to this appeal, both in this Court and the court below; and that the cash deposit made in the trial court in lieu of cost bond be subject to and used for the payment of such costs; and that this decision be certified below for observance.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-94-00088-CV

Reverend Homer Green, Appellant

v.

United Pentecostal Church International, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 200TH JUDICIAL DISTRICT NO. 92-00572, HONORABLE PAUL R. DAVIS, JR., JUDGE PRESIDING

Appellant Reverend Homer Green sued appellee United Pentecostal Clhurch International ("UPCI") for damages arising from UPCI's cancellation of his affiliated minister's license under theories of contract and tort. The trial court granted UPCI's motion to dismiss for lack of jurisdiction, concluding that the First Amendment to the United States Constitution precluded its jurisdiction over the suit. We will affirm the trial court's order

dismissing this action.

BACKGROUND

UPCI licenses Pentecostal ministers; without a UPCI license, a minister cannot contract for employment with any UPCI affiliated Pentecostal congregation. Green was a Pentecostal minister licensed by UPCI. In 1989, the Texas District Board of UPCI charged Green with immoral conduct and conduct disruptive to his local congregation, the Westgate Apostolic Church. The Judicial Procedures for Ministers (the "JPFM') included in the Manual of the United Pentecostal Church sets out procedural guidelines for resolving grievances and charges filed against licensed ministers. The JPFM provides that after a District Board files a charge, the accused minister is entitled to a pretrial hearing at which a three-member panel akin to a grand jury receives evidence to determine whether there is sufficient evidence for the matter to proceed to a "jury trial." Accordingly, a pretrial hearing was conducted on November28 and 29, 1989.

During the time leading up to the pretrial hearing, Green was involved in an unrelated civil suit in Travis County district court against his church and some of its members. *See Green v. Westgate Apostolic Church*, 808 S.W.2d 547 (Tex. App.- Austin 1991, writ denied). The civil suit involved a

dispute over control of the Westgate church and its property, and Green sought exemplary damages from several individuals, three of whom came forward to testify at the ecclesiastical pretrial hearing.

The three-member tribunal presiding over the ecclesiastical pretrial hearing determined that sufficient evidence existed to go forward with a trial on the charges against Green, and pursuant to the JPFM, the "jury trial" was scheduled to commence on January 18, 1990. However, two days before trial, UPCI summarily cancelled Green's license and terminated his UPCI credentials. UPCI contends that it terminated Green's license before the "jury trial" because Of Green's actions during and after the pretrial hearing. According to UPCI, Green deliberately attempted to intimidate two of the witnesses to the ecclesiastical proceedings by serving them with notices of intent to take their oral depositions in the pending civil suit. UPCI further contends that immediately following the pretrial hearing, Green caused the records and tapes of the hearing to be subpoenaed for use in the pending civil suit in violation of Article V of the JPFM, which states that "all transcripts and records of the hearing shall be the property" of the Church and that the records "cannot be opened except by approval of the Executive Board." When

the General Board of the Church met on January 16, 1990, it determined that Green's intimidation of witnesses warranted immediate termination of his license:

> Motion made and seconded that Homer Green be dropped as recommended by the Presiding Officer. The reason for this being because of *the outrageous and blatant disregard for ethics and Christian principle and complete lack of any attempt on his part to comply with the requirements of the Judicial Procedure* with regard to intimidation of witnesses. Carried. (Emphasis added.)

Green contends that the JPFM guarantees "ecclesiastical due process" to a minister charged with misconduct. According to Green, his license could not be cancelled until a "jury" of his similarly licensed peers found him guilty of the charges. Based on UPCI's alleged failure to follow the procedural requisites set out in the JPFM, Green filed suit claiming substantial damages arising in contract and tort. UPCI filed a motion to dismiss for want of jurisdiction, claiming that the trial court lacked subject matter jurisdiction over the suit because Green's claim "brings into question the decision of an ecclesiastical body as to the retention of a minister." The trial court agreed and dismissed the suit for want of jurisdiction. Green raises twelve points of error challenging the trial

court's judgment.

DISCUSSION

In his first eight points of error, Green contends that the trial court erred in granting UPCI's motion to dismiss. His arguments raise a single issue for this Court to address-UPCI's authority to determine who will preach in UPCI-affiliated churches. The First Amendment of the United States Constitution, applied to the states through the Fourteenth Amendment, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amends. I, XIV. The Constitution thus mandates that government and religion remain separate and accordingly forbids the government from interfering with the right of hierarchical religious bodies to establish their own internal rules and regulations and create tribunals for adjudicating disputes over religious matters. *See Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-09, 724-25 (1976). It has been well settled for over 120 years by the United States Supreme Court that when the highest authority of a church judicatory has decided questions of discipline, faith, or ecclesiastical rule, custom, or law, secular civil courts must accept such decisions as final and binding:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all ... within the general association, is unquestioned. *All who united themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be vain consent and would lead to total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*

Watson v. Jones, 80 U.S. (13 Wall.) 679, 728-29 (1871) (emphasis added).

UPCI's decision to terminate Green's license was a purely ecclesiastical matter. "The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." *McClure v.*

Salvation Army, 460 F.2d 553, 558-59 (5th Cir.), *cert. denied*, 490 U.S. 896 (1972). Green argues that his claim can be resolved on the basis of neutral principles of law without "secular intrusion" into, or "ecclesiastical entanglement" with, any religious matters. We disagree.

We are persuaded by the Fifth Circuit's holding in *Simpson v. Wells Lamont Corp.*, 494 F.2d 490 (5th Cir. 1974), that the interaction between a church and its pastor is an integral part of church government:

> This case involves the fundamental question of who will preach from the pulpit of a church . . . . The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church.... The people of the United States conveyed no power to Congress to vest its courts with jurisdiction to settle purely ecclesiastical disputes.

Id. at 492.

In resolving the charges against Green, UPCI followed the procedures set out in the JPFM. Based on its determination that Green violated provisions of ecclesiastical conduct prohibiting the intimidation of witnesses and the subpoenaing of church documents, the UPCI Governing Board terminated his license without

proceeding to the jury trial. After the revocation of his license, Green appealed the revocation pursuant to the JPFM, and he was dismissed according to the procedures outlined in the JPFM. Notwithstanding Green's claims that UPCI violated its own rules, we conclude that the trial court properly dismissed his claim for want of jurisdiction, correctly refusing to intrude into ecclesiastical rules, policies or decisions.

> Plaintiffs' effort to distinguish the long line of precedents on the ground that the Church . . . failed to follow its own rules, thereby denying the pastor "due process," is unavailing. We look to the substance and effect of plaintiffs' complaint, not its emblemata. Howsoever a suit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated.

Natal v. Christian & Missionary Alliance, 878 F.2d 1575, 1577 (1st Cir. 1989); *see also Patterson v. Southwestern Baptist Seminary*, 858 S.W.2d 602, 605-06 (Tex. App.- Fort Worth 1993, no writ). Green was dismissed as an act of discipline, and questions of church discipline and government are left to the church, limited only by the courts' supervision of property and civil rights. *See*

Hughes v. Keeling, 198 S.W.2d 779, 783 (Tex. Civ. App.- Beaumont 1946, writ ref'd n.r.e.).

Green's claim that UPCI's decision was "arbitrary, fraudulent or collusive" does not open the door for this Court to review UPCI's decision. The Supreme Court has left unresolved the question of whether there is room for "marginal civil court review" of the decisions of ecclesiastical tribunals under the narrow rubrics of fraud or collusion; however, it has made clear that there is no "arbitrariness" exception to the general rule that civil courts are bound to accept the decisions of ecclesiastical tribunals on religious matters. *See Milivojevich*, 426 U.S. at 713. "Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance." *Id.* at 715. Civil courts are barred from entertaining claims that ecclesiastical procedures were arbitrary and thus violated fundamental due process rights:

> For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in [a] sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow . . . . But this is exactly the inquiry that the First

> Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry . . ..

Id. at 713. While the Supreme Court has left open the possibility that fraud or collusion claims may serve as vehicles for civil court review of ecclesiastical decisions, Green has failed to establish egregious conduct on the part of UPCI that would trigger our review under such an exception. Green is seeking civil court review of the subjective judgment of UPCI's governing body that his license should be revoked due to his "blatant disregard for ethics and Christian principle." A civil court cannot constitutionally intervene in this dispute because this is exactly the type of intervention the First Amendment was designed to prevent. *See Hutchison v. Thomas*, 799 F.2d 392, 393 (6th Cir. 1986). Thus, we overrule Green's first eight points 4 error. Because of our disposition of these points, it is unnecessary for us to address the four remaining points of error.

CONCLUSION

Green's complaint directly involves, and would require intrusion into, rules, policies, and decisions that are unmistakably of ecclesiastical cognizance. The First Amendment bars such an inquiry. For this reason,

we overrule Green's first eight points of error and affirm the trial court's order dismissing the cause for want of subject matter jurisdiction.

Jimmy Carroll, Chief Justice

Before Chief Justice Carroll, Justices Aboussie and Jones

Affirmed
Filed: May 3, 1995
Publish

OFFICIAL NOTICE FROM COURT OF APPEALS
THIRD DISTRICT OF TEXAS
DATE: June 21, 1995
RE: Case No. 03-94-00088
STYLE: Reverend Homer Green v. United Pentecostal Church International

On the date noted above, appellant's amended motion for rehearing and motion for order allowing additional point of error were overruled and appellant's original motion for rehearing was dismissed by this Court in the above cause.

W. Kenneth Law, Clerk

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

October 27, 1995

Mr. Bob Andrews
P.O. Box 92692
Austin, TX 78709-2692

Mr. Will Hampton
4425 MoPac South, Suite 105
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Austin, TX 78746

RE: Case Number 95-0726
Style: REVEREND HOMER GREEN
V.
UNITED PENTECOSTAL CHURCH INTERNATIONAL

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing, as amended, of the application for writ of error in the above styled case. Motion for court set aside its order denying application for writ of error and allow filing of amended application for writ of error without acting on motion for rehearing is overruled. Motion for court to set aside its order denying application for writ of error and allow filing of amended application for writ of error without acting on either the original

or the amended motion for rehearing and motion to allow slight excess of pages in application is overruled.

Sincerely,

John T. Adams, Clerk

by

/s/ Blanca E. Morin, Deputy

IN THE SUPREME COURT OF TEXAS

September 14, 1905

NO. 95-0726 *

REVEREND HOMER GREEN *

V. *

* From TRAVIS
* County, 3rd
UNITED PENTECOSTAL * District.
CHURCH INTERNATIONAL *

Application of petitioner for writ of error to the Court of Appeals for the Third District having been duly considered, and the Court having determined that the application presents no error of law which is of such importance to the jurisprudence of the State as to require correction, or reversal of the judgment of the Court of Appeals, it is ordered that said application be, and hereby is, denied.

It is further ordered that applicant, Reverend Homer Green, pay all costs incurred on this application

****

IN THE SUPREME COURT OF TEXAS

NO. 95-0726	*	October 27, 1995
	*	
REVEREND HOMER GREEN	*	
	*	From TRAVIS
V.	*	County, 3rd
	*	District
UNITED PENTECOSTAL	*	
CHURCH INTERNATIONAL	*	

Petitioner's motion for rehearing of application for writ of error, together with petitioner's motion for court to set aside its order denying application for writ of error and allow filing of amended application for writ of error without acting on motion for rehearing, filed herein on September 29. 1995, and petitioner's motion for court to set aside its order denying application for writ of error and allow filing of amended application for Writ of error without acting on either the original or the amended motion for rehearing and motion to allow slight excess of pages in application, filed herein on October 10, 1995, having been duly considered, it is ordered that the motion for court to set aside its order denying application for writ of error and allow filing of amended application for writ of error without acting on motion for rehearing be overruled, that the motion for court to set aside its order

denying application for writ of error and allow filing of amended application for writ of error without acting on either the original or the amended motion for rehearing and motion to allow slight excess of pages in application be overruled, and that said motion for rehearing, as amended, be, and hereby is, overruled.

****

Supreme Court, U.S.
FILED
MAR 8 1996
CLERK

No. 95-1261

In The

Supreme Court of the United States

October Term, 1995

REVEREND HOMER GREEN,

Petitioner,

vs.

UNITED PENTECOSTAL CHURCH INTERNATIONAL,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below erred in properly dismissing this matter for lack of subject matter jurisdiction under previous precedent and the United States and Texas Constitutions.

LISTING OF PARTIES

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TRIAL COURT JUDGE:

The Honorable Paul R. Davis, Jr.
Presiding Judge
200th Judicial District
Austin, Travis County, Texas

JUSTICES OF THE THIRD COURT OF APPEALS:

The Honorable Jimmy L. Carroll
Chief Justice
The Honorable Marilyn Aboussie
Justice
The Honorable J. Woodfin Jones
Justice
Third Court of Appeals
209 W. 14th Street
Austin, Texas 78701

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Respondent, United Pentecostal Church International, submits this Brief in Opposition to the Petition for Writ of Certiorari filed by the Petitioner, Reverend Homer Green. For clarity, Rev. Green will be referred to herein as "Green," and United Pentecostal Church International will be referred to as the "Church."

OPINIONS BELOW

This case arises out of the same transaction and facts as the Texas Third Court of Appeals and the Texas Supreme Court considered in *Green v. Westgate Apostolic Church*, 808 S.W. 2d 547 (Tex. App. — Austin 1991, *writ denied*). The Petitioner, Reverend Green, was a party to that previous suit. The instant case for consideration in this instance, arises from the same facts as the case cited above, and those cited in the Third Court of Appeals' opinion in *Green v. United Pentecostal Church International*, 899 S.W. 2d 28 (Tex. App. — Austin, 1995, *writ denied*). Green sued the Church for damages arisings from the Church's cancellation of his affiliated minister's license under theories of contract and tort. The trial court, 200th Judicial District, Travis County, Texas, Paul R. Davis, Jr., presiding, granted the Church's motion to dismiss for lack of jurisdiction, concluding that the First Amendment to the United States Constitution precluded the court's jurisdiction over the suit. The Third Court of Appeals, Austin, Jimmy L. Carroll, Chief Justice, affirmed the trial court's order dismissing Green's action. *Id.* at 28. On September 14, 1995, the Supreme Court of Texas issued its order denying Green's Application for Writ of Error. Each of the above orders and opinions are contained in the Appendix of Green's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Green was a licensed Pentecostal minister, licensed by the Church. In 1989, charges were brought against Green by the

Texas District Board of the Church. On August 31, 1989, David Gray, the Regional Presiding Officer of the Southwest Region of the Church, wrote Green to notify him of the charges, which involved alleged immoral conduct that was disruptive to the local congregation. *See* Affidavit of David Gray, Tr. 31-56. Gray wrote to Rev. E. L. Holley, the District Superintendent of the Texas District, the same day to acknowledge receipt of the charges against Green. *Id.* In that letter, Gray told Holley and the District Board, "that all provisions of the judicial procedure must be scrupulously complied with." Tr. 40-41. In both the letter to Green and the letter to Holley, Gray called attention to several key passages of the section of the Manual of the Untied Pentecostal Church dealing with judicial procedure for ministers. Two of the passages read as follows:

> Any attempt to prejudice the fellowship (for or against the accused) through any other process outside of this Judicial Procedure could result in significant and substantial disciplinary action against anyone responsible.
>
> In order to insure the integrity of this judicial procedure, any intimidation, or attempt to intimidate the defendant, plaintiff, presiding officer, jurors, counselors or witnesses by oral, written or physical means or the threat of same, or any action to obstruct the process of this judicial procedure, shall result in significant and substantial disciplinary action against those who are responsible for such conduct and this action may include, but is not limited to, loss of minister's license.

Id.

Throughout the proceedings leading up to the pre-trial hearing, the Texas District followed the judicial procedures prescribed by the Church. Tr. 32-34. A date was set for a pre-trial hearing, and a three member tribunal was called to hear the case. *Id.* The panel was composed of Gray, Rev. Billy Pendergrass, and Jesse Williams. *Id.* Green asked Ron Walls and H.K. Duke to be his counselors for the proceedings. *Id.* Under judicial procedures, the three-member panel is akin to a grand jury, and it receives evidence to determine whether there is sufficient evidence for the matter to go to trial.

During the time leading up to the pre-trial hearing, Green was involved in a civil suit in Travis County District Court against the Westgate Apostolic Church and some of its individual members. *See Green v. Westgate Apostolic Church*, 808 S.W. 2d 547 (Tex. App. — Austin 1991, *writ denied*). That suit involved a dispute over control of the Westgate church and its property. The lawsuit sought exemplary damages from the individuals sued by Green, three of which came forward to testify in the pre-trial hearing. Tr. 32-34.

The pre-trial hearing was held in Austin on November 28 and 29, 1994. While Jana Cook and Nelda Johnson, two of the witnesses against Green, were waiting to testify at the pre-trial hearing, they were served with notices of intent to take their oral depositions with attached *subpoena duces tecum*. *Id.* Given the irrelevance of Cook's and Johnson's allegations to the then pending civil suit, the Church perceived this action to be a deliberate attempt to intimidate witnesses to the ecclesiastical proceeding.

Immediately following the pre-trial hearing, and while the presiding officers were still present, Green caused the records and tapes of the pre-trial hearing to be subpoenaed for use in the pending civil suit. *Id.* Such action flies in the face of Church

regulations, as Section 6 of Article V of the Judicial Procedure for Ministers states, "[A]ll transcripts and records of the hearing shall be the property of the" Church, and that the records "cannot be opened except by the approval of the Executive Board." As a result of these events, Gray recommended to the Executive Board that Green be dropped as a Pentecostal minister. *Id.* In his letter to the Executive Board, Gray stated:

> Because of the outrageous and blatant disregard for ethics and Christian principle and the complete lack of any attempt on his part to comply with these requirements, I herewith recommend to the Executive Board that Homer R. Green be dropped from the fellowship of the United Pentecostal Church. His attempt to disrupt and destroy the judicial procedure of the United Pentecostal Church is reprehensible.

Tr. 52-53.

Ken Gurley, District Counselor, also wrote to the Executive Board and expressed his opinion that, based on the intimidation practiced by Green, he should be dropped as a minister and the trial should not be had. Tr. 60-61.

The members of the tribunal of the pre-trial hearing made the decision that enough evidence existed for there to be a trial on the charges previously made against Green. Tr. 55-56. The Executive Board initially decided not to follow the recommendations that Green be dropped as a minister and that the ecclesiastical proceedings should continue. Later actions by Green changed their minds.

Following the pre-trial hearing, Green's counsel in the civil suit subpoenaed the two women who had alleged that Green had engaged in immoral conduct. Tr. 58. Gurley described Green's actions as "gross intimidation," and this last act by Green was essentially the straw that broke the camel's back. When the General Board of the Church met on January 16, 1990, it was presented with the evidence of the intimidation by Green. *See* Affidavit of C.M. Becton, Tr. 6364. As stated in the minutes of that meeting, a

> [M]otion [was] made and seconded that Homer Green be dropped as recommended by the Presiding Officer. The reason for this being because of the outrageous and blatant disregard for the ethics and Christian principle and complete lack of any attempt on his part to comply with the requirements of the Judicial Procedure with regard to intimidation of witnesses. Carried.

Tr. 63-64, 66. Green was notified of this action by a certified letter from Becton on January 17, 1990. Tr. 68-69.

REASONS FOR DENYING THE WRIT

This case involves the most basic of religious questions: who can preach from the pulpit of a church. *Simpson v. Wells Lamont Corp.*, 494 F.2d 490 (5th Cir. 1974); S.F., p. 144-45. Green states that the Church denied him a "purely factfinding" hearing by the Church before revocation of his license to preach in churches affiliated with the United Pentecostal Church International; however, the Church, after evidence of Green's flagrant violation of the Church's beliefs, chose to no longer allow him to affiliate with the Church. This denial of affiliation is something Green himself acknowledges the church has the

power to do. S.F., p. 120-22. Green, as stated in his own brief to the court of appeals, attempted to bring the Church into civil court to "be the subject of a secular damage suit." Green's brief to the court of appeals, page 2. Green is not attempting to again become affiliated with the Church, as "[N]obody has to take a minister that doesn't want to." S.F. 45.

The civil court does not have subject matter jurisdiction over the claims made by Green because it brings into question the decision of an ecclesiastical body as to the retention of a minister. This, then, is the real issue before the Court today.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

U.S. Const. amend. I.

These first few words of the Bill of Rights make it clear that government and religion are to remain separate. More specifically for this appeal, it has been well settled for over 120 years by the United States Supreme Court, and by the Texas Supreme Court, that when questions of discipline, of faith, or of ecclesiastical rule, custom or law have been decided by the highest authority of a church judicatory, secular civil courts must accept such decisions as final, and as binding on them, in their application to the case before them. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 96 S. Ct. 2372, 2381 (1976) *quoting Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666 (1872); *Hughes v. Keeling*, 198 S.W. 2d 779 (Tex. Civ. App. — Beaumont 1946, *no writ*). The trial court dismissed this suit on the basis that it had no subject matter jurisdiction, and, in his appeal, Green seeks to have the Court reverse this long line of precedent supporting the trial court's decision. It should be noted that Green tries to focus on the facts of his suit against the Church

in his brief, but the issues of the underlying suit should not be reached as, due to the lack of jurisdiction, the court had no power other than to dismiss the case.

As was noted by the courts below, this issue was succinctly resolved by the *Simpson* court:

> This case involves the fundamental question of who will preach from the pulpit of a church, and who will occupy the church parsonage. The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church. The District Court dismissed this civil rights suit brought by a pastor for damages for his ouster by church officials. As if the long history of separation of ecclesiastical courts and civil courts prior to and since the founding of this country were not sufficient to ground an affirmance, the first words of the Bill of Rights in the United States Constitution would clearly establish the unconstitutionality of any law asserted on behalf of the plaintiff . . . The people of the United States conveyed no power to Congress to vest its courtswith jurisdiction to settle purely ecclesiastical disputes.

Simpson, 494 F.2d at 496.

Green was able to utilize the procedures set forth by the Church. Green lost his license after the Church governing board reviewed his alleged infractions of Church doctrine and ecclesiastical judicial procedure. *See* Defendant's Motion to

Dismiss and accompanying evidence, Transcript (hereinafter "Tr."), 19-116, 37-43, 52-53, 55-6; Tr. 60-61, S.F., p. 101, 104, 107, 113-18. He specifically violated provisions of ecclesiastical conduct prohibiting the intimidation of witnesses and the subpoenaing of Church documents. *Id*; *see also*, Tr. 62-66. After the revocation of his license, Green attempted an appeal within the Church. S.F. 28, 117-18. The Church allowed him to follow its ecclesiastical process as contained in Manual of the United Pentecostal Church, and he was dismissed according to the procedures outlined in the Manual. Tr. 72-87.

Church structure creates a "spirit of freedom for religious organizations, an independence from secular control or manipulation in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S. Ct. 143, 97 L. Ed. 2d 120 (1952). The interaction between the church and its pastor is an integral part of church government. *Simpson* at 493. The Supreme Court has reaffirmed the principle that civil courts are not an appropriate forum for review of internal ecclesiastical decisions. *Id.* at 494.

> The relationship between an organized church and its ministers is its life blood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern. Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection.

McClure v. Salvation Army, 460 F.2d 553 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S. Ct. 132, 34 L. Ed. 2d 153 (1972).

The decision of the Church to terminate Green's license was a purely ecclesiastical matter. The civil courts of this country are prohibited by the First Amendment from interfering in the purely ecclesiastical or administrative affairs of a church. *Hill v. Sargent*, 615 S.W. 2d 300, 301 (Tex. Civ. App. — Dallas 1981, *no writ*). Green was dismissed as an act of discipline, and questions of church discipline and government are left to the church limited only by the courts' supervision of property and civil rights. *Mangum v. Swearingen*, 565 S.W. 2d 957, (Tex. Civ. App. — San Antonio 1978, *ref'd n.r.e*); *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W. 2d 865 (Tex. Civ. App. — Texarkana 1977, *no writ*); *Gray v. Saint Matthews Cathedral Endowment Fund*, 544 S.W. 2d 488 (Tex. Civ. App. — Texarkana 1976, *ref'd n.r.e.*).

Although Green has raised in his Points of Error issues related to his constitutional rights, he made no allegations other than under theories of contract and tort, and, therefore, no property or civil rights are invoked. Plaintiff's First Amended Original Petition, Tr. 218-231; Green brief to the court of appeals, pp. 1-2. This issue has been waived on appeal. Green's lawsuit only focuses on requiring a judge and jury to review the Church's decision to drop him as a minister.

As stated by the Supreme Court over 120 years ago, and approved just 20 years ago:

> The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the

> ecclesiastical government of all the individual members, congregations, and officers within the general association is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeal as the organism itself provides for.*

Watson v. Jones, 80 U.S. (13 Wall.) 679, 728-29, 20 L. E. 666 (1871) (emphasis added). This passage is directly on point in the case of Green.

If this Court were to reverse the decision of the trial court, it would contribute to the subversion of the Church as warned against in *Watson*. Green consented to the government of the Church when he voluntarily joined and sought the Church's license to be a minister within it. Now, he seeks a secular court's review, and such review would be improper, and this case was properly dismissed for want of jurisdiction.

An additional bar against review of this case is the fact that the Church is a hierarchical church. The Third Court of Appeals previously decided that issue in *Westgate Apostolic*, 808 S.W. 2d at 551. Once again the civil court has properly deferred to Church

laws. *See id.* Both the Supreme Court and Texas courts have granted heightened deference to hierarchical churches. *Id.*

Green also alleges in his brief that the Church made "egregious" breaches of his supposed contractual relationship with the Church. Because Green's allegation of a contractual breach involve the same issues of jurisdiction, it is nothing more than a restatement of his previous Points of Error. As the Sixth Circuit stated in *Hutchison v. Thomas*,

> Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he had become "unappointable" due to recurring problems in his relationships with local congregations. This Court cannot constitutionally intervene in such a dispute.

Hutchison v. Thomas, 789 F.2d 392, 393 (6th Cir. 1986).

Green, in a Number 3 of his Questions Presented, also outlines that the court should allow a trial in this matter due to the alleged egregious, fraudulent and collusive character of the Church's actions in contravention of its own written guaranties of judicial fairness, as embodied in its *Judicial Procedure for Ministers*. Green's brief to the Court of Appeals, pp. 3-9. This argument also goes to facts of his underlying contract and tort claims and not to the issue of the court's lack of subject matter jurisdiction.

Even if the Church failed to follow its own procedures, courts are not permitted to pass on its decision to dismiss Green. As stated above and noted by the trial court at the hearing, the Church did follow its procedures as outlined in the Manual and even if it did not, the Church's conduct did not rise to the level

that secular civil review would be warranted. *See Milivojevich*, 426 U.S. at 713, 96 S. Ct. at 2382; S.F. 145-146. The preamble to the Manual states that intimidation of witnesses or others involved in judicial proceedings "shall result in significant and substantial disciplinary action against those who are responsible for such conduct and this action may include, but is not limited to, loss of minister's license." Tr. 75. The Church ruled, after a hearing that intimidation had occurred, and decided to impose the sanction specifically provided for by the Manual — the revocation of Green's license. Tr. 66. For a civil court to examine that decision would be contrary to the line of authority already referred to above. In any event, the dismissal of this cause was not contingent upon the Church having properly followed its own procedures.

As the court in *Serbian* stated:

> For civil courts to analyze whether the ecclesiastical actions of a church judicatory are . . . "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decision of church tribunals as it finds them.

Serbian, 426 U.S. at 713, 96 S. Ct. at 2382.

This statement by the Supreme Court makes it clear that Green's claim that the Church's decision was "arbitrary, fraudulent or collusive" does not open the door for this Court to review the Church's decision, and this cause was properly dismissed for want of subject matter jurisdiction. In *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989), the court rejected the plaintiff's argument that the church's decision to discharge him as a minister was subject to review by the Court because he had been denied due process because the church had failed to follow its own rules. In rejecting this argument, the court stated,

> Plaintiff's effort to distinguish the long line of precedents on the ground that the Church . . . failed to follow its own rules, thereby denying the pastor "due process," is unavailing. We look to the substance and effect of plaintiff's complaint, not its emblemata. Howsoever a suit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated.

Natal, 878 F.2d at 1577. The court went on to state that,

> By its very nature, the inquiry which Natal would have us undertake into the circumstances of this discharge plunges an inquisitor into a maelstrom of Church policy, administration, and governance. It is an inquiry barred by the Free Exercise Clause.

Id. at 1578.

The inquiry requested by Green in the instant case is identical to that sought by the minister in *Natal*. The courts below, like the court in *Natal*, properly refrained from passing on such matters even if it questioned whether the Church followed it own procedures. S.F. 145-46. As the courts below recognized, and as stated in *Schismatic and Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc.*, 710 S.W. 2d 700, 707 (Tex. App. — Dallas 1986, *ref'd n.r.e*), *cert. denied*, 484 U.S. 823, *reh'g denied*, 484 U.S. 970 (1987):

> [Appellants] urge us to depart from prior Texas law, which we have shown has consistently followed the deference rule, and to adopt the neutral principles of law rule approved by the United States Supreme Court in *Jones* [*v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979)]. We recognize that in 1909 the Supreme Court may have felt compelled to follow the deference rule because it thought the *Watson v. Jones* decision required its application at the time *Brown v. Clark* [102 Tex. 323, 116 S.W. 360 (1909)] was decided and that the lower courts felt compelled to follow *Brown v. Clark*. Even though the *Jones v. Wolf* decision now gives the states a choice of methods to resolve hierarchical church property disputes, our supreme court has nevertheless spoken on this issue.

Texas appellate courts are bound by the Texas Supreme Court's pronouncements until it rules to the contrary. *Casa Linda*, 710 S.W. 2d at 707 *quoting Jones v. Hutchinson County*, 615 S.W. 2d 927, 933 (Tex. App. — Amarillo 1981, *no writ*). Where the law is settled, the obligatory course for a court is judicial self-restraint.

See Watson v. Zep Manufacturing Co., 582 S.W. 2d 178, 180 (Tex. Civ. App. — Dallas 1979, *writ ref'd n.r.e.*).

Finally, Green attacks the form of the evidence used by the Church in the motion to dismiss. It should be noted that Green failed to file a response with the trial court to the motion to dismiss and challenging the evidence attached thereto, and he has waived his objections to the form of the evidence. *Cf. City of Houston v. Clear Creek Basin Auth.*, 589 S.W. 2d 671, 678 (Tex. 1979); *Denison v. Haeber Roofing Co.*, 767 S.W. 2d 862, 865 (Tex. App. — Corpus Christi 1989, *no writ*). In addition, Green stated he had no objection to the affidavit of Ken Gurley, Tr. 57-61, so any objection to that evidence was waived. S.F. 63-64.

In the affidavit of David Gray, Tr. 31-56, Green only objected to the sentence contained on Tr. 33 which begins, "The pre-trial hearing . . ." The basis of the objection was that it was incorrect information (S.F. 67-68), and the court overruled that objection, as it was not — and is not — a valid objection. Green had no objection to any other part of the affidavit or its attachments. S.F. 68.

The court sustained the objection to that paragraph of Becton's affidavit (Tr. 62-70) contained on p. 63 of the Transcript which begins "[F]ollowing the pre-trial hearing . . . ," and Green had no objection to any other portion of the affidavit or its attachments, therefore waiving any other objections. Therefore, any other objections to this Court as to the evidence presented by the Church were also waived.

CONCLUSION

Green's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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